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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)  
Office of Administrative Law Judges

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER

CIVIL PENALTY PROCEEDING

Docket No. KENT 88-152  
A.C. No. 15-13469-03658

v.

Green River Coal No. 9 Mine

GREEN RIVER COAL COMPANY,  
RESPONDENT

DECISION ON REMAND

Appearances: Joseph B. Luckett, Esq., Office of the Solicitor,  
U.S. Department of Labor, Nashville, Tennessee,  
for the Petitioner;  
B. R. Paxton, Esq., Paxton & Kusch, Central City,  
Kentucky, for the Respondent.

Before: Judge Koutras

Statement of the Case

On April 24, 1989, I issued a decision in this matter, 11 FMSHRC 685 (April 1989). However, through an oversight, the decision was issued before the receipt of the posthearing briefs subsequently filed by the parties. As a result of the premature issuance of the decision, MSHA filed a petition for discretionary review with the Commission claiming that a prejudicial error was committed when the decision was issued prior to the May 3, 1989, date set by me for the filing of briefs by the parties.

On May 10, 1989, the Commission granted MSHA's petition for review, vacated my decision, and remanded the case to me for further consideration in light of the posthearing briefs filed by the parties.

Discussion

MSHA only takes issue with my prior decision concerning a section 104(A) "S&S" Citation No. 3227259, March 21, 1988, which cites an alleged violation of the safeguard provisions of mandatory safety standard 30 C.F.R. 75.1403(5)(g). The posthearing

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briefs filed by the parties address this citation, and the interpretation and application of two prior safeguarding decisions in Secretary v. Southern Ohio Coal Company, 7 FMSHRC 509 (April 1985), and Secretary v. Mid-Continent Resources, Inc., 7 FMSHRC 1457 (September 1985).

I have now reviewed and considered the written posthearing briefs filed by the parties. The issue raised in the briefs is the same as that raised by the respondent during oral arguments in the course of the hearing, and it is the same issue discussed and disposed of in my prior decision at 11 FMSHRC 696 through 703. Under the circumstances, I find no basis for changing my prior dispositive findings and conclusions with respect to the citation, and my prior decision in this regard is herein incorporated by reference and REAFFIRMED.

ORDER

In view of the foregoing, IT IS ORDERED THAT:

My prior findings and conclusions with respect to the contested citations in this proceeding, including the civil penalty assessments for the citations which have been affirmed, are incorporated by reference, and REAFFIRMED as my dispositive decision in this matter. See: 11 FMSHRC 704-705.

George A. Koutras  
Administrative Law Judge